



No attorney has appeared for the defendant, and it has not sought an extension of time to arrange for substitute counsel.<sup>1</sup> Since it is a corporation (Compl. ¶ 5), it cannot appear pro se, see Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 201-02 (1993), and by its failure to comply with the court's order has entirely stalled the litigation. Under these circumstances, the only remedy appears to be the entry of a default, which plaintiff requests (see Feb. 9, 2009 letter to the Court from Sergei Lemberg, Esq.) and we recommend.<sup>2</sup>

#### CONCLUSION

For the reasons noted, we recommend entry of a default against defendant Woodside Discount Auto Center. The determination of damages may await the adjudication of claims in the forthcoming amended complaint.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from this date to file written

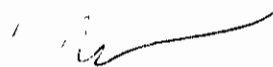
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<sup>1</sup> Plaintiff's counsel has represented that the company has gone out of business. (Feb. 9, 2009 letter to the Court from Sergei Lemberg, Esq.).

<sup>2</sup> We note that plaintiff has requested leave to amend the complaint to add as a defendant the Credit Assistance Corporation, which is the holder of plaintiff's note, a process that is likely to take up to thirty days. (Feb. 9, 2009 letter to the Court from Sergei Lemberg, Esq.). Thus entry of a default against Woodside Discount Auto Center would not end this litigation.

objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court and served on all adversaries, with extra copies to be delivered to the chambers of the Honorable Barbara S. Jones, Room 620, and to the chambers of the undersigned, Room 1670, 500 Pearl Street, New York, New York 10007-1312. Failure to file timely objections may constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. See Thomas v. Arn, 474 U.S. 140, 150 (1985), reh'g denied, 474 U.S. 1111 (1986); DeLeon v. Strack, 234 F.3d 84, 86 (2d Cir. 2000) (citing Small v. Sec'y of Health and Human Serv., 892 F.2d 15, 16 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(d).

Dated: New York, New York  
February 10, 2009



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MICHAEL H. DOLINGER  
UNITED STATES MAGISTRATE JUDGE

Copies of the foregoing Report and Recommendation have been sent this day to:

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